



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB2030

Introduced 2/20/2009, by Sen. Chris Lauzen

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Development Impact Fee Authorization for Local Governments Act. Authorizes municipalities and counties to adopt ordinances to impose, on behalf of themselves or other local governments, development impact fees on new developments in the municipality or county. Sets forth requirements and procedures for adopting the fee ordinances, for the imposition, collection, and expenditure of the fees, for returning unexpended fees, and for appealing the imposition of the fees. Requires that, within 2 years after the effective date of this Act, all municipalities and counties must conform any existing impact fee ordinance with the provisions required under this Act. Effective immediately.

LRB096 10855 HLH 21085 b

FISCAL NOTE ACT  
MAY APPLY

HOUSING  
AFFORDABILITY  
IMPACT NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Development Impact Fee Authorization for Local Governments  
6 Act.

7 Section 5. Statement of purpose and intent. The General  
8 Assembly finds that the purpose of this Act is to establish the  
9 criteria by which municipalities and counties, on behalf of  
10 themselves or other units of local government, may impose  
11 development impact fees on all developments. It is the intent  
12 of the General Assembly to:

13 (1) encourage economic growth by assuring that all  
14 developments bear their fair share of the costs associated with  
15 providing necessary capital improvements to serve a  
16 development;

17 (2) preserve the right of municipalities and counties to  
18 adopt and implement development impact fee ordinances that  
19 adhere to and meet the minimum requirements set forth in this  
20 Act;

21 (3) provide for a system of due process by which parties  
22 affected under this Act have fair and reasonable notice of, and  
23 an opportunity to participate in, the adoption of development

1 impact fee ordinances, and the collection and use of these  
2 development impact fees; and

3 (4) preserve the right of municipalities and counties to  
4 negotiate annexation agreements within their planning  
5 jurisdiction, by providing that this Act does not affect the  
6 current law of annexation agreements or any annexation  
7 agreements existing on the effective date of this Act.

8 Section 10. Definitions. As used in this Act:

9 "Adopted capital improvement program or budget" is a  
10 document that sets out the need for public facility capital  
11 improvements, the cost of those improvements, and proposed  
12 funding sources. A capital improvement program or budget must  
13 include a needs assessment describing the service area or  
14 service areas and the public facilities required to maintain  
15 service standards in response to the introduction of new demand  
16 units. The adopted capital improvement program or budget must  
17 be consistent with an adopted comprehensive plan or plans. A  
18 capital improvement program or budget must specify actual and  
19 estimated public facility capital costs and must identify  
20 potential sources of funding including, but not limited to,  
21 external funding and development impact fees. A capital  
22 improvement program or budget must cover at least a 5 year  
23 period and be adopted by the governing body of the unit of  
24 local government.

25 "Adopted comprehensive plan" is a document that sets out

1 the goals, objectives, and policies intended to guide the  
2 physical, economic, and social development of a community. At a  
3 minimum, the comprehensive plan must contain elements  
4 addressing land use, population, housing, and community  
5 facilities. The comprehensive plan must identify areas for new  
6 development and must designate generalized land uses for those  
7 areas. A comprehensive plan must project land development for  
8 at least a 5-year period of time and be adopted by the  
9 governing body of the municipality or county.

10 "Credits" means the present value of the contribution of  
11 money, dedication of land, debt service payment, or tax revenue  
12 generated by a development toward the cost of existing or  
13 planned capital improvements of a like nature to those for  
14 which an impact fee is imposed.

15 "Demand unit" means a unit associated with a development  
16 that generates the need for expansion or improvement to public  
17 facilities.

18 "Developer" means any corporation, organization, person,  
19 or other legal entity constructing or creating a development.

20 "Development" means any change to improved or unimproved  
21 real property, or the use of any principal structure or land,  
22 including the dividing of land into parcels.

23 "Development impact fees" means the cash payment or land  
24 dedication that is imposed on a development by a municipality  
25 or county to fund all or a portion of public facilities capital  
26 improvements that are necessary as a result of the development.

1 Development impact fees are additional and supplemental to, and  
2 not in substitution of, any other requirements imposed by the  
3 municipality or county as a condition of development approval.

4 "Discount rate" means that interest rate, expressed in  
5 terms of percentage per annum, that is used to adjust past or  
6 future financial or monetary payments to present value.

7 "Encumbered" means to commit to use collected development  
8 impact fees by legal obligation, appropriation, or other  
9 official action of a unit of local government.

10 "Present owner" means the person or persons shown to be in  
11 title to the real estate subject to a refund as reflected in  
12 the official records of the county kept by the assessor as of  
13 the previous January 1, prior to any refund.

14 "Present value" means the current value of past, present,  
15 or future payments that are adjusted to a base period by a  
16 discount rate.

17 "Proportionate share" means that share or portion of total  
18 public-facilities-capital-improvement costs that bear a  
19 rational nexus to development, minus: (i) any credits for  
20 construction or dedication of public facility capital  
21 improvements; (ii) any credit for dedication of land for public  
22 facility capital improvements; and (iii) past or future  
23 payments for actual or estimated  
24 public-facility-capital-improvement costs made or reasonably  
25 anticipated to be made by a development in the form of debt  
26 service payments and taxes. Credits for past or future payments

1 toward capital improvement costs must be adjusted to present  
2 value in order to make fair comparisons of monetary amounts  
3 paid or received at different times.

4 "Public facility" means any facility or equipment  
5 currently or hereafter owned or operated by a unit of local  
6 government and that serves the public as its primary purpose.

7 "Public facilities capital improvement" or "capital  
8 improvement" includes, but is not limited to, any construction,  
9 expansion, or enhancement of any public facility and the  
10 equipment, land acquisitions, and land improvements made  
11 necessary by development, excluding wetland enhancement or  
12 mitigation required under State or federal law. Qualifying  
13 capital equipment must have a minimum useful life of at least 5  
14 years.

15 "Public-facilities-capital-improvement costs" include, but  
16 are not limited to, actual or estimated capital improvement  
17 costs associated with the construction, expansion, or  
18 enhancement of any public facility and the equipment, land  
19 acquisition, land improvement, design, engineering, and  
20 professional costs related thereto. The costs do not include  
21 routine and periodic maintenance expenditures or other  
22 operating costs.

23 "Rational nexus" means an established connection between a  
24 development and the new or expanded capital facilities required  
25 to accommodate the development, an identification of the cost  
26 of those new or expanded capital facilities required to

1 accommodate the development, and an appropriate apportionment  
2 of that cost to development in relation to benefits reasonably  
3 received. A development impact fee is not invalid because  
4 payment of the fee may result in an incidental benefit to other  
5 owners or developers.

6 "Service area" means a geographic area delineated by a unit  
7 of local government in which a defined set of capital  
8 improvements or a defined amount of school lands, park lands,  
9 or other land usages provide service to a development within  
10 the area.

11 "Service standard" means the prevailing level of service  
12 delivery associated with a public facility for which a  
13 development impact fee is required. The service standard is  
14 based on a quantitative measure of service provided from  
15 existing public facilities to support existing development  
16 over a reasonable and recent period of time. A determination of  
17 the prevailing level of service must consider the quality of  
18 existing facilities in addition to the quantity.

19 "Unit of local government" means all units of local  
20 government as defined in Article VII, Section 1 of the Illinois  
21 Constitution and school districts.

22 Section 15. Authorization to impose development impact fee  
23 ordinances.

24 (a) Municipalities and counties, on behalf of themselves or  
25 other units of local government, are authorized to adopt

1 development impact fee ordinances and to impose, collect, and  
2 expend development impact fees for all public facilities  
3 capital improvements. After the effective date of this Act,  
4 development impact fees may only be imposed by a municipality  
5 or county pursuant to the requirements and limitations set  
6 forth in this Act.

7 (b) Development impact fees may only be imposed for those  
8 projects specifically identified in or covered by a unit of  
9 local government's approved capital improvements program or  
10 budget. The program or budget must specify service standards,  
11 based on anticipated demand units, for each public facility  
12 that is to be the subject of a development impact fee, and  
13 these standards must apply equally to existing and new  
14 developments. The municipality or county must make an  
15 individualized determination that the development impact fee  
16 is related in both nature and extent to the impact imposed by  
17 the development.

18 (c) Payment of development impact fees in accordance with  
19 this Act shall be deemed in compliance with any requirements  
20 for adequate provisions established by municipalities or  
21 counties for such facilities as are covered by development  
22 impact fees.

23 (d) Development impact fees must be assessed in a  
24 non-discriminatory manner and must be imposed on residential  
25 and non-residential development consistent with an adopted  
26 capital improvement program or budget.

1           Section 20. Requirements for the adoption of development  
2 impact fee ordinances.

3           (a) A municipality or county or a unit of local government  
4 that desires a municipality or county to adopt a development  
5 impact fee ordinance shall conduct a needs assessment for the  
6 public facility or project for which the development impact fee  
7 is to be imposed. The needs assessment must distinguish  
8 existing needs from the projected needs of development and must  
9 describe an inventory of existing facilities, service  
10 standards upon which the development impact fee is to be based,  
11 and set forth a projection of demand units and community needs.  
12 On completion of a needs assessment and adoption of a capital  
13 improvement program or budget, and prior to imposing a  
14 development impact fee, the municipality or county shall  
15 incorporate the findings of the needs assessment in the  
16 formulation of its development impact fee program.

17           (b) In adopting a development impact fee ordinance, a  
18 municipality or county shall adhere to the following  
19 requirements:

20           (1) The creation, assessment, collection, and  
21 expenditure of any development impact fees pursuant to this  
22 Act must bear a rational nexus to the burden imposed upon  
23 the unit of local government to provide additional capital  
24 improvements to support the development. Adherence to the  
25 provisions of this Act shall be considered in determining

1           whether a rational nexus exists.

2           (2) The development impact fees imposed upon a  
3 development may not exceed the proportionate share of the  
4 costs incurred or to be incurred by the unit of local  
5 government in accommodating development. In determining  
6 what is a proportionate share, a unit of local government  
7 shall take into account the actual or estimated cost of a  
8 public facility or capital improvement project that bears a  
9 rational nexus to a development after considering the  
10 generation of additional demand from the development and  
11 any appropriate credits for contribution of money,  
12 dedication of land, debt service payments, or taxes from  
13 the development dedicated for such projects.

14           (3) The amount of each development impact fee imposed  
15 under this Act must be based upon actual costs or  
16 reasonable estimates of costs for the creation or expansion  
17 of capital improvements to be incurred by the unit of local  
18 government as a result of development. Actual or estimated  
19 costs must be adjusted to consider any external funding  
20 secured or reasonably anticipated in support of the public  
21 facility.

22           (c) Municipalities and counties requiring the payment of  
23 development impact fees shall incorporate the fee requirements  
24 within their broader system of development and land use  
25 regulations in such a manner that developments, either  
26 collectively or individually, are not required to pay or

1 otherwise contribute more than a proportionate share of capital  
2 improvement costs.

3 (d) Municipalities and counties shall develop a  
4 methodology in calculating development impact fees that is  
5 sensitive to demand, cost, and revenue considerations and  
6 consistent with the requirements of this Act.

7 (e) All documents enacted by a unit of local government  
8 pursuant to this Section must be on file within a unit of local  
9 government and available for public inspection.

10 Section 25. Use of development impact fees.

11 (a) Development impact fees may be imposed and expended  
12 for, but not limited to, the following purposes:

13 (1) Construction of public facilities capital  
14 improvements.

15 (2) Upgrading, updating, or expanding existing capital  
16 improvements to serve developments.

17 (3) Acquisition of lands for schools, parks,  
18 libraries, roads, capital-facility sites, and other  
19 necessities caused by development.

20 (4) General improvements to lands that are made  
21 necessary by development.

22 (5) Wastewater treatment facilities and sanitary sewer  
23 collection systems.

24 (6) Potable water extraction, treatment, storage  
25 facilities, and distribution systems.

- 1 (7) Stormwater management facilities and systems.
- 2 (8) Fees for independent engineers, financial  
3 contractors, and other contractual services.
- 4 (9) Planning, surveying, designing, engineering, and  
5 other like costs.
- 6 (10) Attorney's fee and costs.
- 7 (11) Payments advanced by a unit of local government  
8 and later reimbursed by the developer as part of an  
9 authorized development impact fee expenditure.
- 10 (b) Projected interest charges and other finance costs may  
11 be included in determining the amount of development impact  
12 fees to the extent the development impact fees are used for the  
13 payment of principal and interest on bonds, notes, or other  
14 obligations issued by or on behalf of a unit of local  
15 government and are used to finance capital improvements made  
16 necessary by development.

17 Section 30. Collection and; expenditure of development  
18 impacts fees accounting of funds.

19 (a) Development impact fees imposed pursuant to this Act  
20 shall be assessed prior to the issuance of a building permit or  
21 other appropriate permission to proceed with a development. A  
22 unit of local government may delay or extend the payment of  
23 development impact fees for a period of time not to exceed 10  
24 years and may impose an interest rate on the delayed or  
25 extended payment.

1           (b) Moneys received from development impact fees assessed  
2 under this Act must be placed in a separate fund and accounted  
3 for separately, and may only be used for the purposes  
4 authorized by this Act. Interest earned on all moneys deposited  
5 in the separate fund shall be credited toward that account.

6           Section 35. Requirement of a public hearing.  
7 Municipalities and counties shall conduct a public hearing  
8 regarding any proposal for new or increased development impact  
9 fees and shall publish a notice 30 days in advance of the  
10 hearing in at least one newspaper of general circulation within  
11 the unit of local government. The notice must include the date,  
12 time, and location of the hearing as well as a general  
13 description of the development impact fee that is to be  
14 considered. The municipality or county shall conduct a public  
15 hearing on the proposal at any time after the expiration of 30  
16 days' notice, and at least 14 days prior to the scheduled date  
17 of adoption of the new or increased development impact fee by  
18 the governing body. The requirement for new or increased  
19 development impact fees shall not be effective prior to 60 days  
20 following the date of adoption.

21           Section 40. Appeals process and judicial review.

22           (a) Any developer paying a development impact fee under  
23 this Act has the right to contest the imposition, collection,  
24 or use of the development impact fee, as well as other related

1 matters. The initial appeal must be made to the governing body  
2 of the municipality or county responsible for creating the  
3 development impact fee and must be in accordance with any  
4 procedures adopted in the development impact fee ordinance. Any  
5 subsequent relief may be sought in a de novo proceeding in a  
6 court with proper jurisdiction and venue.

7 (b) If a developer pays any development impact fee under  
8 protest, the developer is not prohibited from exercising the  
9 right of appeal as provided by law.

10 Section 45. Intergovernmental agreements. Units of local  
11 government jointly affected by developments may enter into  
12 intergovernmental agreements with each other, with other  
13 governmental authorities, or with the State to create, assess,  
14 collect, and expend development impact fees consistent with the  
15 provisions of this Act.

16 Section 50. Service areas. If a municipality or county, in  
17 its sole discretion, requires the delineation of service areas,  
18 a unit of local government shall establish the service areas  
19 for the collection or expenditure of development impact fees,  
20 provided that a reasonable benefit is delivered to the  
21 development in the absence of such service areas. Any service  
22 areas must be appropriate to the nature of the particular  
23 capital improvement.

1           Section 55. Development impact fees and land dedications. A  
2 municipality or county, in its sole discretion, may require a  
3 developer to dedicate land in lieu of development impact fees.  
4 Land dedications may not exceed a development's proportionate  
5 share, must bear a rational nexus to the development, and must  
6 conform to the other requirements of this Act.

7           Section 60. Construction of capital improvements. This Act  
8 does not prevent a municipality from acting in accordance with  
9 Division 12 of Article 11 of the Illinois Municipal Code or a  
10 county from acting in accordance with 55 ILCS 5/5-12001.

11           Section 65. Limitation on municipalities or counties.  
12 Beginning one year after the effective date of this Act, a  
13 municipality or county may not include, as a condition of  
14 development approval, any requirement that a developer  
15 contribute or pay for land acquisition or construction or  
16 expansion of capital improvements or portions thereof unless  
17 the municipality or county has enacted an ordinance requiring  
18 all other similar (by land use category or nature of impact)  
19 developments to contribute a proportionate share of the funds,  
20 land, or public facilities necessary to accommodate any impact  
21 through the payment of development impact fees as described in  
22 this Act.

23           Section 70. Recoupment. A unit of local government may

1 recoup costs of excess capacity in existing facilities, where  
2 such excess capacity has been provided in anticipation of the  
3 needs of a development, by requiring development impact fees  
4 for those portions of the facilities constructed for future  
5 users. The development impact fees imposed to recoup such costs  
6 must be based on the unit of local government's actual cost of  
7 acquiring or constructing the facility and must be no more than  
8 a proportionate share of such costs. That portion of a  
9 development impact fee deemed a recoupment is exempt from the  
10 Section 75.

11 Section 75. Reversion of unexpended or unencumbered funds;  
12 application for refunds.

13 (a) All development impact fee revenues collected under  
14 this Act must be expended or encumbered for capital  
15 improvements authorized herein within 10 years of the date of  
16 collection. If the development impact fee revenues are not  
17 expended or encumbered within 10 years of collection, then the  
18 unit of local government holding the funds shall return to the  
19 present owner, the amount of the unencumbered fee plus any  
20 interest collected upon proper request for a refund and a  
21 determination that a refund is proper. If land is dedicated in  
22 lieu of cash payments, then the unit of local government, at  
23 its option, may return either the land or the fair value of the  
24 land at the date on which it was dedicated.

25 (b) If eligible for a refund, a present owner must submit

1 to the municipality or county a written request within one year  
2 of the date the right to claim a refund arises. If the refund  
3 is deemed proper, then the municipality or county shall return,  
4 or require a unit of local government to return, the amount to  
5 be refunded. All refunds due and not claimed within the  
6 required time period must remain in the special fund, and  
7 expended only as provided in this Act.

8 Section 80. Termination of development impact fee  
9 ordinances. The corporate authorities of a municipality or the  
10 governing body county may, by ordinance, terminate any or all  
11 development impact fee ordinances. Upon a finding that any  
12 development impact fee is to be terminated, the municipality or  
13 county shall publish notice of termination and the availability  
14 of any refunds in a newspaper of general circulation within the  
15 unit of local government. If at the end of one year no request  
16 for a refund is made, the remaining development impact fee  
17 funds may be transferred to the unit of local government's  
18 general fund, and used for any public purpose. A municipality  
19 or county is released from this notice requirement if there are  
20 no unexpended or unencumbered balances within a fund or funds  
21 being terminated.

22 Section 85. Compliance by municipalities or counties. No  
23 later than 2 years after the effective date of this Act,  
24 municipalities or counties shall conform all development

1 impact fee ordinances in existence on the effective date of  
2 this Act to the provisions of this Act. Before that date, the  
3 failure of development impact fee ordinances that was adopted  
4 prior to the effective date of this Act to meet the  
5 requirements of a valid development impact fee set forth under  
6 this Act is not grounds for challenging the validity of those  
7 fees.

8 Section 97. Severability. The provisions of this Act are  
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 999. Effective date. This Act takes effect upon  
11 becoming law.